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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of:

Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Rosendale, New York) )

MM DOCKET NO. 93-17  
RM-8170

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**NATOLE'S COMMENTS ON SUNY RESPONSE  
TO SHU/RSB SUPPLEMENTAL REPLY COMMENTS**

Raymond A. Natole (Natole) files these comments to the "SUNY Response to SHU/RSB Supplemental Reply Comments." Specifically, Natole addresses the State University of New York's (SUNY's) contention that Natole's counterproposal to add Channel 255A at West Hurley, New York cannot be treated as a valid counterproposal in this proceeding.

**A. Background.**

On February 17, 1993, the Commission issued a Notice of

with an additional local service, Channel 255A is available for allotment. Parties were to file comments on or before April 12, 1993 and reply comments on or before April 27, 1993.

"Showing and Comments" were filed by SUNY on April 9, 1993 expressing its continued interest and requesting that Channel 273A be allocated as a non-reserved channel. Sacred Heart University, Inc. (SHU) and Radio South Burlington, Inc. (RSB) filed a Joint Counterproposal on April 12, 1993. They propose the following amendment to the FM Table of Allotments.

	<u>Present</u>	<u>Proposed</u>
Sharon, Connecticut	277A	*277A
Rosendale, New York	--	*255A
Washington, New York	--	273A

SHU, the licensee of noncommercial educational FM station WSHU-FM in Fairfield, Connecticut proposes that \*277A be retained at Sharan, Connecticut on a noncommercial basis. RSB, the permittee of Channel 277A, WQQQ(FM) in Sharan, Connecticut seeks to allocate Channel 273A to Washington, New York, and to change its city of license to Washington, New York. That proposed change is mutually exclusive with SUNY's proposal to allocate Channel 273A to Rosendale.

Natole also filed Comments of Raymond A. Natole on April 12, 1993. See Exhibit 1. He proposed the allocation of Channel 255A to Rosendale Village, New York.

Reply Comments were filed on April 27, 1993 by WMHT Educational Telecommunications supporting SUNY's petition to allocate Channel 273A to Rosendale, New York. SHU and RSB also filed

Reply Comments further clarifying and reiterating their interest in the allocation of the channels as specified in their Joint Counterproposal. SUNY filed Reply Comments on April 27 opposing the joint SHU/RSB counterproposal.

Supplemental reply comments were filed on May 12, 1993 by SHU and RSB alleging that SUNY's proposal should be denied since SUNY allegedly, "has requested that the Commission approve a new channel allotment for which it has no intention of complying with the Commission's allocation technical rules." Supp. Reply Comments at ¶10.

**B. Argument.**

SUNY claims that Natole's comments should be rejected since the comments were not served on SUNY as required by the Notice of Proposed Rulemaking and Rule 1.420(a). SUNY is correct that Natole's comments were not served on SUNY. However, for the reasons more particularly set forth below, its counterproposal should nonetheless be considered.

As noted by the Commission in Boalsburg, Pennsylvania, 7 FCC Rcd. 7653 (1992) at n. 7, "While we require that all counterproposals be technically and procedurally correct when filed, we do not absolutely prohibit minor curative submissions." [Citations omitted]. See also Scottsboro, Alabama, 3 FCC Rcd. 6507 (1988). In Boalsburg, the Commission accepted a counterproposal which failed to include a commitment to reimburse two other licensees for expenses associated with changing channels. Furthermore, the Commission routinely accepts pleadings in rulemaking proceedings that are late or otherwise in some way

defective if to do so would be in the public interest. See Mechanicsville, Virginia, 7 FCC Rcd. 6309 (September 28, 1992) at n. 6 ("Although the Commission's rules do not contemplate the filing of late pleadings, we believe that their acceptance will serve the public interest, and we do not believe that it would prejudice any party in this matter"). Acceptance of Natole's comments is in the public interest and will not prejudice any party. Even SUNY acknowledges, "It may turn out that Channel 255A is not necessary to effectuate SUNY's plans for the use of Channel 273A to Rosendale, and that there is therefore no impediment to the FCC's issuing a separate notice with respect to West Hurley." SUNY Response at pp. 3-4.

The public is benefited by consideration of Natole's counterproposal and by the possible and early inauguration of a new

WHEREFORE, it is respectfully requested that Natole's comments be considered.

Respectfully submitted,

RAYMOND A. NATOLE

GAMMON & GRANGE, P.C.  
8280 Greensboro Drive  
Seventh Floor  
McLean, VA 22102-3807  
(709) 761-5000

By A. Wray Fitch III  
A. Wray Fitch III  
His Attorney

July 2, 1993

[klw/003.comments]

**EXHIBIT 1**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
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RM-8170

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF RAYMOND A. NATOLE

1. Raymond A. Natole ("NATOLE"), a U.S. Citizen, is resident of Shokan, NY. He supports the addition of the new Channel 255A to the FM Table of Allotments, but herein proposes a counter use.
2. The Docket has been proposed by the State University of New York ("STATE"). It requests this new channel to be added to Rosendale, New York. The census designated place, Rosendale Village, has a population of 1,284 persons according to the 1990 Census. In addition, STATE already operates WFMP in Rosendale and this would constitute a second service for the community and for STATE. The proposed site is restricted 10.1 km north of the village.
3. NATOLE requests that Channel 255A be allotted to an alternate community, West Hurley, New York, in accordance with the attached technical exhibit.

A. This is a census designated place in the 1990 U.S. Census of 2,252 persons, almost double the population of Rosendale Village.

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B. The proposed service meets all FCC spacing requirements.

C. The reference coordinates used in this request is the center of West Hurley and site restriction is not required for the allocation.

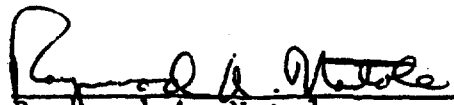
D. The entire city of West Hurley will be served by this proposal.

E. The attached technical exhibit demonstrates the only local service available in West Hurley is two Class D translators. These two are licensed to Christian Media Associates operating with low power in the educational band.

F. The proposed service in West Hurley will provide 60 dBu coverage to 280,818 persons in a land area of 3,055 square kilometers.

4. NATOLE will promptly file a FCC Form 301 upon grant of the petition and construct the station on grant of the permit.

Respectfully submitted,

  
Raymond A. Natole  
P.O. Box 327  
Shokan, NY 12481

April 9, 1993



## ALLOCATION STATEMENT

This statement is prepared on behalf of Raymond Natole in Shokan, New York. This is a petition for Rulemaking which requests an amendment of the Table of FM Channel Allotments, Section 73.202(b) of the FCC Rules. This is being filed as a counter-petition to RM-8170 for Channel 255A in Rosendale, NY. This petition requests a first service to West Hurley, NY on the same Channel 255A. This statement discusses the technical factors involved in the above change.

1. The reference coordinates for this proposal are:  
Latitude 42°00'06" North, Longitude 74°06'00" West  
This site is located in the geographical center of West Hurley, NY, a census designated place in the 1990 US Census. From this site the entire city of West Hurley, NY will be served with the 70 dBu contour as required by §73.315(a) and (b), as demonstrated in Exhibit B.
2. This site is within 320 km of the US-Canadian Border. The FCC Staff reported that coordination has been obtained from Canada as a Class B1 and therefore is eligible for 6 kW at 100 meters.
3. As can be seen from the attached Exhibit A, Class ~~A~~ operation from this site will comply with all separation requirements as set forth in §73.207 of the FCC Rules. No site restriction is required from the center of West Hurley.
4. This request is for a first service. A complete search of the AM-FM-TV databases was made to confirm first service. The only services shown in West Hurley are two Class D stations: W202AJ and W204AF.
5. The population of West Hurley, NY is 2,252 persons. The 60 dBu contour calculated from this site using §73.313 will have 280,818 persons. These numbers are based on the 1990 census.

I, John R. Furr, I am a Communications Consultant, and represent Raymond Natole. My qualifications are a matter of record with the Federal Communications Commission, and all statements made herein are true and correct to the best of my knowledge and belief.

April 8, 1990

  
John R. Furr

**JF&A**  
COMMUNICATIONS  
CONSULTANTS

NATOLE  
WEST HURLEY, NY  
NARRATIVE

PAGE 1

>>>>>> Study For Channel 255 98.9 MHz <<<<<<<

WTW	CATSKILL, NY	253 A	98.5	2.35	42-12-00	31.06	31
HC	STERN'S COMPANY	IN	48-352	112	73-50-07	44.7	+0.06 CLOSE



**CERTIFICATE OF SERVICE**

I, Tim Wineland, in the law offices of Gammon & Grange, do hereby certify that I have, on this 2nd day of July 1993, mailed by first-class, postage prepaid, U.S. Mail, copies of the foregoing NATOLE'S COMMENTS ON SUNY RESPONSE TO SHU/RSB SUPPLEMENTAL REPLY COMMENTS to the following:

Leslie K. Shapiro  
Allocations Branch, Policy & Rules Division  
Federal Communications Commission  
2025 M Street, N.W., Room 8313  
Washington, DC 20554

Mark N. Lipp, Esq.  
Mullin, Rhyne, Emmons & Topel  
1000 Connecticut Avenue, N.W.  
Suite 500  
Washington, DC 20036

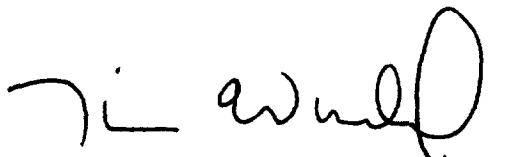
Todd Gray, Esq.  
Dow, Lohnes & Albertson  
1255 - 23rd Street, N.W.  
Suite 500  
Washington, DC 20037

Steve C. Schaffer, Esq.  
Schwartz, Woods & Miller  
1350 Connecticut Avenue, N.W.  
Suite 300  
Washington, DC 20036

Allan G. Moskowitz, Esq.  
Kaye, Scholer, Fierman, Hays & Handler  
901 - 15th Street, N.W.  
Suite 1100  
Washington, DC 20005

Kyle E. Magrill  
Magrill & Associates  
P.O. Box 456  
Orange Lake, FL 32681

Mr. Lewis Rosenthal  
State University of New York  
State University Plaza  
Albany, NY 12246

  
Tim Wineland